

against Heide & Williams, INC., a California Corporation (hereinafter referred to as “Defendant”). Plaintiffs, in this action, sought \$318,215.35 in unpaid fringe benefit contributions and liquidated damages in the amount of \$218,465.67 for the period of January, 2000 through July, 2005, plus interest thereon, as well as an audit entry, pursuant to the Operating Engineers Master Agreement (“Master Agreement”) and the relevant trust agreements establishing Plaintiff Trust Funds. The parties, by and through their counsel of record, hereby stipulate and agree to settle this action under the following terms:

2. Defendant agrees to have judgment entered against them in the amount of \$536,681.02 for delinquent fringe benefit contributions and liquidated damages for the period of January, 2000 through July, 2005, together with interest at the rate of twelve (12%) percent per annum on the unpaid balance.

3. The parties hereto stipulate and agree that Defendant shall remit an initial payment of \$66,330.50 to the Trust Funds’ office upon execution of this Stipulation. The rest of the payments, totaling \$306,502.00 plus interest, shall be made over a ten-month period, with fourteen monthly installments. All payments will be applied first to the principal amount due under this Stipulation and then to interest. All installment payments are due on the fifteenth day of every month and will be considered late if not received by the Operating Engineers Trust Fund by the 24th day of the month. Payments shall be made as follows:

| <u>Payment No.</u> | <u>Due Date</u> | <u>Amount Due</u> |
|--------------------|--------------------|-------------------|
| No. 1 | September 15, 2005 | \$30,650.20 |
| No. 2 | October 15, 2005 | \$30,650.20 |
| No. 3 | November 15, 2005 | \$30,650.20 |
| No. 4 | December 15, 2005 | \$30,650.20 |
| No. 5 | January 15, 2006 | \$ 5000.00 |
| No. 6 | February 15, 2006 | \$ 5000.00 |
| No. 7 | March 15, 2006 | \$ 5000.00 |
| No. 8 | April 15, 2006 | \$ 5000.00 |

| | | | |
|---|--------|--------------------|-------------|
| 1 | No. 9 | May 15, 2006 | \$30,650.20 |
| 2 | No. 10 | June 15, 2006 | \$30,650.20 |
| 3 | No. 11 | July 15, 2006 | \$30,650.20 |
| 4 | No. 12 | August 15, 2006 | \$30,650.20 |
| 5 | No. 13 | September 15, 2006 | \$30,650.20 |
| 6 | No. 14 | October 15, 2006 | \$10,650.20 |

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8 4. All of the above-referenced payments shall be made payable to the Operating Engineers
9 Trust Fund and mailed to the Operating Engineers Trust Funds, 1620 South Loop Road, Alameda,
10 California 94502-7090, Attention: Wayne McBride.

11 5. The parties heretofore stipulate that if all payments as above-described are received by
12 the Trust Funds on the date specified above, or sooner, and if Defendants do not default on any
13 other material condition contained herein, the unpaid balance of \$163,849.26 due under this
14 Stipulation, plus any interest accruing thereon, shall be waived by the Trust Funds and the
15 Stipulation for Entry of Judgment shall be deemed paid in full.

16 6. The parties hereto further stipulate and agree that if Defendant fails to make the initial
17 \$66,330.50 payment or any of the monthly installments provided for above in paragraph 3,
18 Plaintiffs may then execute upon the Judgment for the full amount of \$536,681.02, minus the
19 amount of any payments actually received, together with the interest that shall have accrued
20 thereon. The parties further agree that in the event Defendant fails to make any of the required
21 monthly installments due under Paragraph 3, employees performing Operating Engineers worker
22 may be withdrawn from the job without any prior notice to Defendant or Defendant's counsel.
23 Failure of Plaintiffs to exercise such options shall not constitute a waiver of the right to exercise it
24 in the event of a continuing or subsequent default.

25 7. Additionally, Defendant agrees to remain current on all fringe benefit contributions, not
26 yet due and payable, which become due and payable to the Trust Funds during the term of this
27 Stipulated Judgment. It is a material condition of this Stipulated Judgment that Defendant remain

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1 current on all such fringe benefit contributions and failure to do so shall constitute default.

2 8. If Defendant defaults in the making of any of said payments or any part thereof, and if
3 Plaintiffs consult legal counsel with respect thereto, there shall be added to Defendant's obligation
4 under a modification to this Stipulation for Entry of Judgment reasonable attorneys' fees, court
5 costs and all other reasonable expenses incurred by Plaintiffs in connection with such suit or claim,
6 including any and all appellate proceedings therein.

7 9. The parties further acknowledge that by entering into this stipulation, the Trust Fund in
8 no way waives its right to conduct an audit for the period of time covered by this action or to seek
9 payment of any contributions found due from an audit

10 10. The provisions set forth in this Stipulation for Entry of Judgment are not in violation of
11 any state or federal law. However, if any portion of said stipulation is found to be in violation of
12 any state or federal law, then Defendant shall continue to pay the indebtedness outlined herein
13 under Paragraph 3 .

14 11. Plaintiffs hereto stipulate and agree that if Defendant complies with Paragraphs 3 and 4,
15 Plaintiffs will waive the remaining the interest, attorney's fees and cost incurred in this action.
16 Plaintiffs hereby stipulate and agree that once Defendant has complied with paragraph 3 of the
17 Stipulation for Entry of Judgment, Plaintiffs shall file a satisfaction of judgment with the Court.

18 12. Defendant acknowledges to Plaintiffs that Defendant has had the opportunity to be
19 represented by independent legal counsel of its own choice throughout all of the negotiations that
20 preceded the execution of this Stipulation for Entry of Judgment. Defendant further acknowledges
21 that they have had adequate opportunity to perform whatever investigation or inquiry they may
22 deem necessary in connection with the subject matter of this Stipulation for Entry of Judgment
23 prior to its execution, and agree with the delivery and acceptance of the considerations specified in
24 this Stipulation for Entry of Judgment.

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1 The parties hereto mutually state that they have read the foregoing Stipulation for Entry of
2 Judgment and are fully aware of its contents and legal facts. This stipulation for entry of Judgment
3 constitutes the entire agreement of the parties and is entered into on the dates below indicated.

4 Dated: September 2, 2005

HEIDE & WILLIAMS, INC

6 By: _____/s/_____
7

8
9 Dated: September 19, 2005

OPERATING ENGINEERS TRUST FUNDS

11
12 By: _____/s/_____
13 WAYNE McBRIDE
Operating Engineers Trust Fund

14 As to form only:

15 Dated: September 12, 2005

16 WEINBERG, ROGER & ROSENFELD
A Professional Corporation

17
18 By: _____/s/_____
19 PATRICIA DAVIS
Attorneys for Plaintiffs

20 As to form only:

21 Dated: August 26, 2005

22 SIMPSON, GARRITY & INNES, PC

23 By: _____/s/_____
24 PAUL SIMPSON
Attorney for Defendant

25 110965/393832

[PROPOSED] ORDER

It is so ordered that Judgment is entered against Defendant Heide & Williams, INC., A California Corporation, as set forth in the Stipulation For Entry of Judgment.

Dated: 9/27/05

HONORABLE

